

**Objection to the Denial of Construction and Operating Permit
Application No. FP-23-03, Greenview Recycling and Disposal Facility,
Fountain County, Indiana
2009 OEA 21, (08-S-J-4159)**

OFFICIAL SHORT CITATION NAME: When referring to 2009 OEA 21 cite this case as
Greenview Recycling and Disposal, 2009 OEA 21.

TOPICS:

jurisdiction
protective filing
dismissal
trial court
exclusive jurisdiction

PRESIDING ENVIRONMENTAL LAW JUDGE:

Catherine Gibbs

PARTY REPRESENTATIVES:

IDEM: Timothy Junk, Esq.

Petitioner: Donn H. Wray, Esq., Mickey J. Lee, Esq.; Stewart & Irwin, P.C.

ORDER ISSUED:

March 24, 2009

INDEX CATEGORY:

Land

FURTHER CASE ACTIVITY:

[none]

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5. The Court concludes that dismissal in this matter is proper because (1) NJK, as the Petitioner, after iterating that the Petition is a “protective filing” only, has requested a dismissal, and (2) the OEA does not have jurisdiction to consider this Petition for Review pursuant to the determination made in Marion County Superior Court, Civil Division. As the Court is without jurisdiction to hear this matter, it does not have the authority to make a determination regarding the legal status of the IDEM August 8, 2008 denial.

THE COURT, being duly advised **ORDERS** that this matter, pursuant to 315 IAC 1-3-7, is **DISMISSED**. All further proceedings are **VACATED**.

You are hereby further notified that pursuant to provisions of I.C. § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of I.C. § 4-21.5. Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 24th day of March, 2009 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge